IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/01/2003

Coram

The Honourable Mr. Justice V. KANAGARAJ

Criminal Original Petition No.1478 of 2003
and
Criminal M.P. No.525 of 2003

1. M.G. Selvaraj
2. Dr. S.E. Pitchai Thambi
3. S. Emperumal .. Petitioners

-Vs-

Intelligence Officer,
Narcotics Control Bureau,
South Zonal Unit. .. Respondent

Petition filed under Section 407 of Criminal Procedure Code as
stated therein.

For petitioner: Ms. Vedavalli

For respondent: Mr. O. Srinath (Criminal Side)

:O R D E R
This petition is filed under Section 407 of the Criminal
Procedure Code praying that in the circumstances of the case, this Court may order transferring the case in CC. No.276 of 2001 pending trial on the file of the Principal Special Judge for NDPS Act cases at Chennai to any another Court having competent jurisdiction.

2. Today on presenting the facts and circumstances brought
forth on the part of the petitioners, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners and the Special Prosecutor for NDPS cases, this Court is able to see that on certain procedural aspects, the petitioner has become aggrieved against the trial Court and hence transfer is sought for as it is prayed for in the petition.

3. So far as certain personal allegations raised against the
Presiding Officer in this case is concerned, the same has been dismissed by the Order of this Court dated 31.10.2002 on suitable and valid reasons assigned. Therefore, it is not necessary on the part of this Court to go into those allegations again.

4. So far as this petition, that has been placed before this

Court at present, is concerned with a big haul of 15 kgs of heroin and in fact on the earlier occasion, this Court has fixed norms for trial having gone into the facts and circumstances of the case put up by the petitioner/A2 in Criminal O.P. No.9229 of 2002 wherein he has prayed for the extension of time for completion of the trial that was fixed earlier by six months and this Court on such considerations was able to fix the same extending the trial upto 12.3.2003 as per the Order dated 13.9.2002 and in these circumstances, the petitioner has alleged that the Judge has chosen to complete the trial in a hurried manner and has passed some adverse comments and that he chose to compel four accused to cross examine PW.1 without considering that the matter has already become subjudice on given facts of the Criminal OPs and Criminal MPs.

5. Further, it is alleged that in spite of their Senior Counsel appointed to defend the case, having seriously fallen ill and admitted to the hospital, the trial Court has chosen to examine all the witnesses with a rush. Having become aggrieved of such happenings, the petitioners have ultimately come forward to file the above Criminal OP seeking to transfer the case in CC No.276 of 2001 pending trial on the file of the Court of Principal Special Judge for NDPS Act cases.

6. The learned counsel for the petitioners today would bring to the notice of this Court two earlier judgments of the learned single Judges of this Court and Madhya Pradesh High Court. The first one is reported in 1988 LW (Crl.) 256 held in the case of Sudarsanam and others vs. State, Deputy Superintendent of Police, Ponneri Division, wherein in para 12, the learned Judge has remarked:
"the trial Court under such situations, has first to decide, whether factually, the prayer to decide, whether factually, the prayer of the accused that the counsel has suddenly taken ill, is true or whether it is only an attempt to get an adjournment to protract the proceedings. If the Court feels that factually, the statement that the counsel has suddenly taken ill, is true and if the Court finds, that ever thereafter, the accused has taken every steps within his powers, to engage another counsel and despite the same he had not succeeded and was forced to pray for an adjournment, the Court has to given an adjournment. The second proviso to S.309(2), Crl.P.C., which lays down that no adjournment or postponement shall be granted without examining the witnesses who are in attendance also permits the Sessions Judge for special reasons to be recorded in writing to grant an adjournment, even when witnesses are in attendance. The section also provides, that in appropriate cases, adjournment could be granted, on payment of costs, either by the prosecution or by the accused. Under those circumstances, the mere fact that witnesses are in attendance, would not be ground for refusing an adjournment and examining the witnesses when the accused are not defended by any counsel. As indicated earlier, the question of adjournment would come in, only if the Court is satisfied, that the request for adjournment is necessitated, by the sudden illness of the counsel".

7. The second judgment is one reported in 1990 Crl. L.J. 1490 held in the case of Himachalsing vs. State of M.P., wherein it is held that,

"No doubt adjournment of a special case must be strictly deprecated, but all the same absence of defence counsel on account of his illness, upon whom his client has full faith, is also not less (important) and therefore, in all fairness of the trial, if the accused is not found indulging in protracting the trial by seeking adjournment on flimsy ground, the trial is to be adjourned on the ground of illness of the counsel of the accused so as to afford him full opportunity to defend him."

8. From the judgments cited supra, the learned Judges have only given their findings as to what are the circumstances under which it is reasonable on the part of the trial Court to grant adjournment and what are the other circumstances in which such adjournments need not be granted in consideration of the relevant provisions of law envisaged under Section 309(2) of the CRPC. But, these remarks are in no manner an answer for a transfer that is sought for on ground of nongranting of adjournments and therefore, the transfer case has to be dealt with at different parameters which are not even brought forth in a satisfactory manner in the pleadings on the part of the petitioner nor do the judgments cited help the Court in arriving at a conclusion regarding the case in hand, which is for the transfer of the case pending trial from the trial court to some other Court having competent jurisdiction.

9. If at all, the petitioner is aggrieved in any manner in following the procedures established by law or running short of time so far as the norms fixed by this Court earlier, the petitioner would be entitled for an extension of time and not the transfer from the Court of original jurisdiction which has already examined many witnesses and is ceased of the subject matter. To avoid many other complications, it is always better not to transfer the case unless very strong reasons prevail for transfer.

10. In the above circumstances, in the above Criminal O.P seeking transfer of the case in hand, if this Court has to arrive at a valid conclusion it should be mentioned that neither the reasons sustain nor are they sufficient nor are the judgments cited are to the point of transfer and therefore, the only conclusion that could be validly arrived at by this Court in the circumstances of the case is, to answer the prayer in the negative since on facts brought forth, the transfer sought to be effected from the Court of original jurisdiction cannot be done in law.

In result, the above Criminal O.P is without merit and the same is dismissed as such. No costs. Consequently, the Criminal M.P. No. 52 5 of 2003 is closed.

Index: Yes
Internet: Yes

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To
1. The Principal Special Judge
for NDPS Act cases
at Chennai.

2. The Public Prosecutor,
High Court, Madras.

3. The Intelligence Officer,
Narcotics Control Bureau,
South Zonal Unit.